

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

BYLAWS

ARTICLE I: THE AGENCY

Section 1: Name: The name of the Agency shall be the Fulton County Industrial Development Agency.

Section 2: Seal of Agency: The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3: Office of Agency: The office of the Agency shall be: c/o Fulton County Planning Department, 1 East Montgomery Street, Johnstown, NY, 12095.

Section 4: Membership: The Agency shall consist of seven (7) members.

Section 5: Qualifications:

- a. Pursuant to Article 18-a of the General Municipal Law of the State of New York (the "Act"), members of the Agency shall be appointed by, and serve at the pleasure of, the Fulton County Board of Supervisors.
- b. Pursuant to Section 3 of the Public Officers Law of the State of New York (the "Public Officers Law"), each member must be at least eighteen (18) years of age, a citizen of the United States and a resident of Fulton County, New York.
- c. A public officer or employee may be appointed as a member of the Agency without forfeiture of any other public office or employment.

Section 6: Duties and Responsibilities of Members:

- a. Members of the Agency constitute the governing body of the Agency (the Board) and shall have all the powers prescribed in the Act and other applicable laws including but not limited to the Public Authorities Accountability Act and Public Authorities Reform Act.
- b. At a minimum, members shall have the following duties and responsibilities:
 - (1) Execute direct oversight of the Agency's Executive Director, Chief Financial Officer, Legal Counsel, Auditor and other staff in the effective and ethical management of the Agency.
 - (2) Understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Agency.
 - (3) Establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the Executive Director and management.
 - (4) Adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in section seventy-four of the public officers law.
 - (5) Establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing,

- misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the Agency, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services.
- (6) Adopt a defense and indemnification policy and disclose such plan to any and all prospective board members.
 - (7) Perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public.
 - (8) At the time that each member takes and subscribes his or her oath of office, execute an acknowledgment, in the form prescribed by the Authorities Budget Office after consultation with the Attorney General, in which the board member acknowledges that he or she understands his or her role, and fiduciary responsibilities and acknowledges that he or she understands his or her duty of loyalty and care to the organization and commitment to the Agency's mission and the public interest.

Section 7: Training:

- (a) Agency members shall participate in State-approved training regarding their legal, fiduciary, financial and ethical responsibilities within one (1) year of appointment to the Board.
- (b) Agency members shall participate in continuing training as may be required to remain informed of best practices, and regulatory and statutory changes relating to effective oversight of management and financial activities of Agency.

Section 8: Independent Member Requirements:

- (a) A majority of the members of the Agency shall be independent which shall be a member who:
 - (1) Is not, and in the past two (2) years has not been, employed by the Agency or an affiliate in an executive capacity.
 - (2) Is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the public authority or received any other form of financial assistance valued at more than \$15,000 from the Agency.
 - (3) Is not a relative of an executive office or employee in an executive position of the Agency or an affiliate.
 - (4) Is not, and in the past two (2) years has not been, a lobbyist registered under a State or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency.

Section 9: Code of Ethics:

- (a) The Agency shall adopt and maintain a Code of Ethics applicable to each member and employee of the Agency.
- (b) The Code of Ethics must, at a minimum, contain the standards set forth in Section 74 of the New York Public Officers Law.

- (c) The Code of Ethics must address conflicts of interest, confidentiality and undue influence.
- (d) The Code of Ethics must be included in the Annual Report.

Section 10: Conflict of Interest:

- (a) The Agency shall adopt and maintain a Conflict of Interest policy.

Section 11: Separation of Agency and Management: A member may serve as Executive Director contingent upon compliance with the Agency's Conflict of Interest and Code of Ethics policies.

Section 12: Fiscal Year: The Agency's fiscal year shall be from January 1 to December 31.

ARTICLE II: OFFICERS:

Section 1: Officers: The officers of the Agency shall be a Chairman, Vice Chairman, Secretary and Treasurer.

Section 2: Chairman: The Chairman shall:

- (a) Preside at all meetings of the Agency.
- (b) Except as otherwise authorized by resolution of the Agency, sign all agreements, contracts, deeds and any other instruments of the Agency.

Section 3: Vice Chairman: The Vice Chairman shall:

- (a) Perform the duties of the Chairman in the absence or incapacity of the Chairman; and in the case of the resignation or death of the Chairman, the Vice Chairman shall perform such duties as are imposed on the Chairman, until such time as the Agency shall appoint a new Chairman.

Section 4: Secretary: The Secretary shall:

- (a) Keep in safe custody the seal of the Agency and shall have power to affix such seal to all contracts and other instruments authorized to be executed by the Agency.

Section 5: Treasurer: The Treasurer shall:

- (a) Oversee work of Chief Financial Officer.
- (b) Sign all instruments of indebtedness and be authorized to:
 - 1) Sign checks for payment of money;
 - 2) Pay out and disburse monies authorized of the Agency.

(c) Sign checks of the Agency.

Section 6: Additional Duties: The officers of the Agency shall perform such other duties and functions as may, from time to time, be required by the Agency, by the Bylaws of the Agency or by the rules and regulations of the Agency.

Section 7: Appointment of Officers: All officers of the Agency shall be appointed at the annual meeting of the Agency from among the members of the Agency and shall hold office for one year, or until their successors are appointed.

Section 8: Vacancies: Should any office become vacant, the Agency shall appoint a successor from among its membership at the next regular meeting, and such appointment shall be for the unexpired term of said office.

ARTICLE III: STAFF

Section 1: Executive Director: The Agency shall annually appoint an Executive Director. The Executive Director shall not be a member of the Agency. This appointment shall be made at the annual meeting of the Agency.

The Executive Director shall be responsible for:

- 1) General supervision over the administration of the business and affairs of the Agency, subject to the direction of the Agency.
- 2) Management of all projects of the Agency.
- 3) Prepare agendas for all Agency meetings and distributes agendas to Agency members prior to each meeting.
- 4) Prepare and distribute minutes of all Agency meetings.
- 5) Work with Audit Committee in preparation of Annual Audit and Financial Reports.
- 6) Work with Treasurer in administering and managing fiscal affairs of the Agency.
- 7) Prepare and distribute Annual Report.
- 8) Receipt of all communications and correspondence to the Agency.
- 9) Maintain Agency files.
- 10) Other work as directed by the Agency.

Section 2: Chief Financial Officer: The Agency shall annually appoint a Chief Financial Officer.

The Chief Financial Officer shall:

- (a) Have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such bank or banks as the Agency may select.
- (b) Keep regular books of accounts showing receipts and expenditures.
- (c) Render to the Agency, at each regular meeting, a Budget Report and a summary of the financial condition of the Agency.
- (d) Sign checks of the Agency.

Section 3: Legal Counsel: The Agency shall annually appoint a legal counsel who shall serve at the pleasure of the Agency. Legal counsel shall provide legal advice as requested by the Agency. This appointment shall be made at the Agency's annual meeting.

Section 4: Auditor: The Agency shall annually appoint an Auditor in accordance with State law to prepare the annual audit and financial reports required to be prepared by the Agency. This appointment shall be made at the Agency's annual meeting.

Section 5: Additional Personnel: The Agency may, from time to time, employ such personnel as it deems necessary to exercise its powers, duties and functions, as prescribed by the NYS Industrial Development Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Agency, subject to the laws of the State of New York.

ARTICLE IV: MEETINGS

Section 1: Annual Meetings: The annual meeting of the Agency shall be held in January of each year.

Section 2: Regular Meetings: Regular meetings of the Agency will be called by the Executive Director, Chairman or by resolution of the Agency. Notice of all meetings shall be given to the local media.

Section 3: Special Meetings: The Chairman may, when he/she deems it desirable, and shall, upon the written request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Agency or may be mailed or e-mailed to the business or home address of each member of the Agency at least three (3) days prior to the date of such special meeting. Waivers of notice may be signed by any members failing to receive a proper notice.

Section 4: Quorum: At all meetings of the Agency, a majority of the members of the Agency shall constitute a quorum for the purpose of transacting business, provided that a smaller number may meet and adjourn to some other time or until the quorum is obtained.

Section 5: Order of Business: At the regular meetings of the Agency, the following shall be the order of business:

1. Attendance.
2. Call meeting to order.
3. Approve minutes of previous meeting.
4. Budget Report
5. Committee Reports.
6. Old Business.

7. New Business.
8. Other Business.
9. Close of Meeting.

Section 6: Manner of Voting:

- 1) The voting on all motions or resolutions coming before the Agency shall be by a call of yeas and nays and shall be entered into the minutes of such meeting.
- 2) A majority of the total membership of the Agency shall approve all motions and resolutions.
- 3) Meetings and voting shall be conducted in accordance with Public Officers Law.

Section 7: Open Meetings Law: All meetings shall be conducted in conformance with the NYS Open Meetings Law.

ARTICLE V: COMMITTEES:

Section 1: Audit Committee: The Chairman shall annually appoint at least three (3) independent Agency members to serve on the Audit Committee. Non-independent members may be appointed provided that independent members constitute a majority. The Audit Committee shall be responsible to:

- 1) Assure that the Agency fulfills its responsibilities for the Agency's internal and external audit process, the financial reporting process and the system of risk assessment and internal controls over financial reporting; and
- 2) Provide an avenue of communication between the independent auditor and Agency.
- 3) Recommend to the Agency the hiring of an independent auditor, establish compensation to be paid to the Auditor and provide direct oversight of the performance of the independent annual audit performed by the independent Auditor.

Section 2: Governance Committee: The Chairman shall annually appoint at least three (3) independent Agency members to serve on the Governance Committee. Non-independent members may be appointed provided that independent members constitute a majority. The Governance Committee shall be responsible to:

- 1) Keep the Agency informed of current best practices in corporate governance.
- 2) Review and update the Agency's governance principles and practices; and
- 3) Advising the Fulton County Board of Supervisors on the skills, qualities and professional or educational experiences necessary to be effective Agency members.
- 4) Examine ethical and conflict of interest issues, perform Agency self-evaluations and recommend Bylaws or changes to them.

Section 3: Finance Committee: The Chairman shall annually appoint at least three (3) independent members to serve on the Finance Committee. Non-independent members may be appointed provided that independent members constitute a majority. The Finance Committee shall be responsible to:

- 1) Review all proposals involving the issuance of debt by the Agency.
- 2) Prepare and submit recommendations to the Agency Board of Directors regarding the issuance of any debt by the Agency.
- 3) Prepare and submit to the Agency Board of Directors proposed policies regarding the issuance of debt by the Agency.

Section 4: Other: The Chairman or Agency shall create other Committees as deemed necessary and appropriate. The Chairman shall appoint members to serve on all such Committees.

ARTICLE VI: ANNUAL REPORT

Section 1: Annual Report: The Agency shall prepare an Annual Report and submit said report to the Fulton County Board of Supervisors, Fulton County Treasurer and NYS Authority Budget Office by March 30th of each year.

Section 2: Annual Report Contents:

a. At a minimum, the Annual Report shall include the following:

- (1) Its operations and accomplishments.
- (2) Its financial reports including:
 - (a) Audited financials in accordance with all applicable regulations and following generally accepted accounting principles as defined in subdivision ten of section two of the state finance law.
 - (b) Grants and subsidy programs.
 - (c) Operating and financial risks.
 - (d) Current ratings, if any, of its bonds issued by recognized municipal bond rating agencies and notice of changes in such ratings, and
 - (e) Long-term liabilities, including leases and employee benefit plans.
- (3) Its mission statement and measurements including its most recent measurement report.
- (4) A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment.
- (5) A compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars.
- (6) The projects undertaken by such authority during the past year.
- (7) A listing and description, in addition to the report required by paragraph a of subdivision three of all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority acquires or disposes of during such period. The report shall contain the price received or paid by the authority and the name of the purchaser or seller for all such property sold or bought by the authority during such period.
- (8) Such authority's code of ethics.
- (9) An assessment of the effectiveness of its internal control structure and procedures.
- (10) A copy of the legislation that forms the statutory basis of the authority.

- (11) A description of the authority and its board structure including:
 - (a) Names of committees and committee members.
 - (b) Lists of board meetings and attendance.
 - (c) Descriptions of major authority units, subsidiaries.
 - (d) Number of employees, and
 - (e) Organizational chart.
- (12) Its charter, if any, and by-laws.
- (13) A listing of material changes in operations and programs during the reporting year.
- (14) At a minimum a four-year financial plan, including:
 - (a) A current and projected capital budget, and
 - (b) An operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance.
- (15) Its board performance evaluations.
- (16) A description of the total amounts of assets, services or both assets and services bought or sold without competitive bidding, including:
 - (a) The nature of those assets and services.
 - (b) The names of the counterparties, and
 - (c) Where the contract price for assets purchased exceeds fair market value, or where the contract price for assets sold is less than fair market value, a detailed explanation of the justification for making the purchase or sale without competitive bidding, and a certification by the chief executive officer and chief financial officer of the public authority that they have reviewed the terms of such purchase or sale and determined that it complies with applicable law and procurement guidelines.
- (17) A description of any material pending litigation in which the authority is involved as a party during the reporting year.

ARTICLE VII: BUDGET

Section 1: The Agency shall submit to the Chairman and Clerk of the Fulton County Board of Supervisors, the Fulton County Treasurer and the Authority Budget Office a budget report containing, for operations and capital construction, actual receipts and expenditures of last completed fiscal year, estimated receipts and expenditures for the next fiscal year and the current fiscal year.

Section 2: The Budget Report shall be submitted at least sixty (60) days before the start of the Agency's fiscal year.

ARTICLE VIII: INDEPENDENT AUDIT

Section 1: The Agency shall have annually prepared an Independent Audit Report, a management letter and other external examination of the books and accounts of the Agency.

Section 2: The Independent Auditor utilized by the Agency shall be subject to the following restrictions:

- (a) The same lead (or coordinating) audit partner cannot provide auditing services to the Agency for more than five (5) consecutive years.

- (b) The independent accounting firm cannot perform certain non-audit services to the Agency contemporaneously with the audit without written approval from the Audit Committee of the Agency.
- (c) The Accounting firm cannot perform auditing services for the Agency if any officer of the Agency was employed by that firm and participated in any capacity in the audit of the Agency during the one-year period preceding initiation of the annual audit.

Section 3: The independent auditors must timely report to the Audit Committee of the Agency the following:

- (a) All critical accounting policies and practices to be used.
- (b) Any alternative treatments of financial information that have been discussed with Agency officials, ramifications of the use of such alternative treatments and the treatment preferred by the accounting firm.
- (c) Other material written communications between the accounting firm and Agency management.

ARTICLE IX: INDEMNIFICATION OF MEMBERS, OFFICERS AND EMPLOYEES

Section 1: Right of Indemnification: Each Member, Officers and Employees of the Agency, whether or not then in office, and any person whose testator or intestate was such a Member, Officer or Employee shall be indemnified by the Agency for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Section 18 of the Public Officers Law of the State of New York or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Agency shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Member, Officer or Employee only if such action or proceeding (or part thereof) was authorized by the Board.

Section 2: Advancement of Expenses:

- (A) Expenses incurred by a Member, Officer or Employee in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article IX may be paid by the corporation in advance of the final disposition of such action or proceeding upon (1) the receipt of an undertaking by or on behalf of such Member, Officer or Employee to repay such advancement in case such Member, Officer or Employee is ultimately found not to be entitled to indemnification as authorized by this Article IX and (2) approval by the Board.
- (B) To the extent permitted by law, the Board shall not be required to find that the Member, Officer or Employee has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Agency makes any advance payment of expenses hereunder.

Section 3: Availability and Interpretation: To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article IX: (A) shall be available with respect to events occurring prior to the adoption of this Article IX, (B) shall continue to exist after any rescission or restrictive amendment of this Article IX with respect to events occurring prior to such rescission or amendment, (C) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Member, Officer or Employee (or, if applicable, at the sole discretion of the testator or intestate of such Member, Officer or Employee seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (d) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Agency and the Member, Officer or Employee for whom such rights are sought were parties to a separate written agreement.

Section 4: Other Rights: The rights of indemnification and to the advancement of expenses provided in this Article IX shall not be deemed exclusive of any other rights to which any Member, Officer or Employee of the Agency or other person may now or hereafter be otherwise entitled, whether contained in these bylaws, a resolution of the Board or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article IX shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Member, Officer or Employee of the Agency or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Agency or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5: Severability: If this Article IX or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article IX shall remain fully enforceable. Any payments made pursuant to this Article IX shall be made only out of funds legally available therefor.

ARTICLE X: MISCELLANEOUS

Section 1: Annual Financial Disclosure: Each member of the Agency shall annually complete and file with the Fulton County Board of Supervisors a Financial Disclosure Statement in compliance with Fulton County's Ethics Law.

Section 2: Loans to Members: No loans shall be made by the Agency to its members, officers or staff.

ARTICLE XI: AMENDMENTS:

Section 1: Amendments to Bylaws: The bylaws of the Agency shall be amended only with the approval of at least a majority of all the members of the Agency at a regular or a special meeting, but no such amendment shall be adopted unless at least a seven day written notice thereof has been previously given to all members of the Agency.

Adopted: March 15, 2007
 September 3, 2010
 March 8, 2022